

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

TIM A BRICKNER,

Plaintiff,

v.

Case No. 09-C-516

TOWER TECH SYSTEMS INC.,

Defendant.

ORDER OF DISMISSAL

Plaintiff Tim A. Brickner commenced this action under the Family and Medical Leave Act ("FMLA") by filing a Complaint on May 21, 2009. The defendant filed a response and a scheduling order was entered on August 27, 2009. Defendant filed a Motion to Compel Discovery on November 6, 2009, which motion was granted by order of December 1, 2009, after plaintiff failed to respond. Shortly thereafter, plaintiff's attorney filed a Motion to Withdraw, stating that his client had failed to maintain contact with him and had failed to respond to his requests for information necessary to respond to the defendant's discovery requests. The Court set the matter for a hearing on December 18, 2009 and ordered that the plaintiff appear personally. The Court further warned plaintiff that, if he failed to appear, the case could be dismissed as a sanction. Counsel for plaintiff appeared and explained that his client had still failed to maintain contact. An affidavit filed by counsel indicates that the plaintiff was served or provided a copy of the Court's previous order.

Based upon the foregoing, the Court concludes that this matter should be dismissed for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. Alternatively, the case is also dismissed as a sanction under Rule 37. The dismissal is with prejudice.

SO ORDERED this 18th day of December, 2009.

s/ William C. Griesbach
William C. Griesbach
United States District Judge